

Letters of Findings: 03-20130611P; 04-20130610P; 10-20130612P**Tax Administration: Penalty
For Tax Period July 2013**

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ISSUE**I. Tax Administration-Penalties.**

Authority: [IC 6-8.1-10-2.1](#); [IC 6-8.1-5-1](#); [45 IAC 15-11-2](#)

Taxpayer protests the imposition of penalties by the Department.

STATEMENT OF FACTS

Taxpayer, a business in Indiana, was late in remitting the following taxes to the Indiana Department of Revenue ("Department"): sales tax; food and beverage tax; and withholding tax. The time period at issue is July 2013. The Department issued proposed penalty and interest assessments for the late taxes. Taxpayer protests the penalty assessments. A telephone hearing was held, and this Letters of Findings addressing all three protests results. Further facts will be presented as required below.

I. Tax Administration-Penalties.**DISCUSSION**

As noted, Taxpayer protests the imposition of the penalties. In its protest letter, Taxpayer states, "I understand that I was remiss in making timely tax liability payments for the month of July 2013[.]" and that Taxpayer believes it has "always been a timely filer." Taxpayer also states that it is requesting the Department to abate "the penalties for this one time oversight."

The Department notes that penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. [IC 6-8.1-10-2.1](#). The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Under [IC 6-8.1-5-1\(c\)](#) the Department's proposed assessments are presumed to be correct. The Department, in 2012, previously abated Taxpayer's penalties for sales tax, food and beverage tax, and withholding tax. Based upon that previous abatement, the Department finds that Taxpayer has not established reasonable cause regarding the penalties for July 2013.

FINDING

Taxpayer's protest of the penalties is denied.

